

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Ameren Missouri's Request)	
for Variance from Portions of)	File No. ET-2013-0197
4 CSR 240-20.065.)	

RESPONSE TO STAFF RECOMMENDATION

COMES NOW Union Electric Company, d/b/a Ameren Missouri (Ameren Missouri or the Company), and for its *Response to Staff Recommendation*, states as follows:

1. On October 29, 2012, Ameren Missouri filed to amend its Net Metering tariff sheets in order to comply with changes in the Missouri Public Service Commission's (Commission) net metering regulations. The filing included several variance requests.

2. On November 15, 2012, the Commission Staff (Staff) filed its *Staff Recommendation of Non-Opposition to Tariff Filing on Commission Determination of Good Cause (Staff Recommendation)*, which did not oppose the variances provided that the Commission believed that the Company had shown good cause for the variance.

Standard for Good Cause

3. The *Staff Recommendation* claims that the Company has not demonstrated good cause for the requested variances. While the courts as well as this Commission have applied a variety of formulations of "good cause" – including some of the principles the Staff cites and other principles the Staff does *not* cite – the Missouri Supreme Court has declared that, at its core, "good cause depends upon the circumstances of the individual case, and a finding of its existence lies largely in the discretion of the officer to which the decision is committed." *Wilson v. M.E. Morris*, 369 S.W.2d 402, 407 (Mo. 1963). Similarly, the Missouri Supreme Court has held that good cause is "...a cause or reason sufficient in law; one that is based on equity or justice or that would motivate a reasonable man under all the circumstances." *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971). The

Missouri Court of Appeals has used the same standard. *Matter of Seiser*, 604 S.W.2d 644, 646 (Mo.App. 1980). The Missouri Court of Appeals has also referred to good cause as “...one of reasonableness as applied to the average man or woman.” *Central Missouri Paving Co*, 575 S.W.2d 889, 892 (Mo.App. 1978).

The *Staff Recommendation* proposes a skewed view of what the Commission must determine in this case. It is clear that the *Staff Recommendation* sets forth the most restrictive definition of good cause possible (avoidance of manifest injustice). The *Staff Recommendation* does not cite other cases which have required something much less than “manifest injustice” as constituting good cause. As the cases cited above demonstrate, the concept of good cause resists any one definition, let alone the Staff’s overly narrow view of what that definition should be. The cases reflect the fact that the Commission has ample discretion to find good cause for reasons of regulatory policy, to balance customer and utility interests, or to achieve policy objectives. Indeed, the Staff’s narrow application of good cause degrades the authority of the Commission by limiting the circumstances under which it may consider the question of good cause.

Ameren Missouri’s Demonstration of Good Cause

4. The *Staff Recommendation* states that the Company has not provided good cause for the requested variances. Using the Staff’s definition of good cause, requiring manifest injustice to be shown, a party might make that argument. However, as explained above, that is an incorrect way to interpret good cause. In fact, a review of the Company’s initial filing shows that it provided a legitimate reason for each requested variance – and in most instances, that reason was an explanation of how each change benefits customers. The remaining reasons were for ease of administration for the Company. The *Staff Recommendation* does not take issue with the reasons provided, and those stated benefits provide sufficient basis upon which the Commission may find good cause to grant Ameren Missouri’s requested variances.

Staff Concern for Maintaining the Exact Same Contract Language

5. The *Staff Recommendation* pleading and the attached Memorandum each cite the concern that granting the requested variances would run “contrary to the Commission’s goal for the rule to provide a consistent and simple contract for all customers.” The Commission should recognize that the statute does not require all utilities have the exact same contract, as can be seen even by reading the language quoted in the *Staff Recommendation*. The language of the statute required the Commission to issue regulations ensuring “simple contracts” are used. The regulation could have just required utilities to create “simple contracts.” The Commission chose to fulfill that portion of the statute by including a simple contract in its rules. That choice, however, that does not mean the Commission cannot or should not now grant variances related to that contract, especially variances which will improve customer understanding and/or the ease of use of the contract. Ameren Missouri’s proposed changes are to clarify areas of customer confusion that it has experienced in the last couple of years. Even with these changes, the contract is still a “simple contract.”

Ameren Missouri’s Rulemaking Comments

6. Lastly, the *Staff Recommendation* indicated that Ameren Missouri did not request these same changes as part of the rulemaking proceeding.¹ What Staff’s argument does not consider is the reality that the number of net metering applications continues to increase at a high rate. Since the rulemaking, Ameren Missouri has gained a great deal more experience with customers who participate in net metering variance. If another rulemaking were held, the

¹ Interestingly, in another case in which the Company requested variances, Staff spent multiple pages arguing that because Ameren Missouri had made similar recommendations in the rulemaking and because the recommendations were not adopted by Commission, the Commission should not consider the matters as variance requests. It seems that whether or not the Company offers comments in a rulemaking, Staff will use that fact against any later variance requests. File No. EO-2012-0142, *Motion for Variance Determinations and Motion for Expedited Treatment*, February 17, 2012, p. 6-8.

Company would likely offer most of these requests as proposed changes to the rule. But the fact that the Company could not have anticipated these areas of confusion does not mean the Commission should reject Ameren Missouri's request to clarify matters through these variance requests.

WHEREFORE, Ameren Missouri requests the Missouri Public Service Commission approve the tariff as filed and approve the waivers requested for portions of 4 CSR 240-20.065.

Respectfully submitted,

UNION ELECTRIC COMPANY,
d/b/a Ameren Missouri

/s/ Wendy K. Tatro

Wendy K. Tatro, #60261
Associate General Counsel
Thomas M. Byrne, #33340
Managing Associate General Counsel
Ameren Services Company
P.O. Box 66149, MC 1310
St. Louis, MO 63166-6149
(314) 554-3484 (phone)
(314) 554-2514
(314) 554-4014 (fax)
AmerenMOService@ameren.com

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 19th day of November, 2012, to the Staff General Counsel and the Office of the Public Counsel.

/s/ Wendy K. Tatro